

**Invitation to Tender – WH20015**

**Contract for the**

**Energy Performance Certificates**

**Schedule 1 - Definitions**

**SCHEDULE 1 – DEFINITIONS**

|  |  |
| --- | --- |
| Approval | means the written consent of the Client. |
| City | means the City of Wolverhampton |
| Client | means Wolverhampton Homes Limited or such other organisation that it may be subsumed into, comprised of or altered to become |
| Client’s Representative | the person or persons appointed, from time to time by the Client to administer some or all of the Services and act as the main point of contact for the Contractor. |
| Client’s Sites | means any of the premises which the Client occupies in the course of its business from time to time as well as those premises which it maintains on behalf of Wolverhampton City Council |
| Commercially Sensitive Information | means the information  (a) that is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or  (b) that constitutes a trade secret; and/or  (c) listed in Commercially Sensitive Information Schedule (where provided) |
| Commencement Date | means the **1st June 2021** or other such date that Parties agree the Services commence. |
| Confidential Information | means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act (DPA). Confidential Information shall not include information which:  (i) was public knowledge at the time of disclosure (otherwise than by breach of clause E3 (Confidential Information));  (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;  (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or  (iv) is independently developed without access to the Confidential Information. |
| Contract | means this written agreement between the Client and the Contractor consisting of the Conditions of Contract and any attached Schedules, including this one. |
| Contracting Authority | Means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015. |
| Contractor’s Employees | means the employees of the Contractor engaged in providing the Services |
| Contract Period | means the period from the Commencement Date to:  (a) the date of expiry set out in clause A2 (Initial Contract Period), or  (b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,  or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract. |
| Contract Price | means the price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Schedule of Rates and Prices, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Indexation). |
| Contract Year | means the following 12 month period from any anniversary of the Commencement Date to the following anniversary. |
| Council | means Wolverhampton City Council, the owner of the Client and of the properties managed by the Client. |
| Customer | mean’s the Tenants and Residents of the properties managed by the Client. |
| Default | means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other. |
| Dispute Resolution Procedure | the procedure for dealing with disputes laid out at Clause I2 |
| DPA | means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| Effective Date | means the date on which this Agreement is signed by both Parties |
| Environmental Information Regulations | means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| Equipment | means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract. |
| Fees Regulations | means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. |
| First Contract Year | means the 12 month period following the Commencement Date. |
| FOIA | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| Force Majeure | means the occurrence of any of the following events after the Effective Date to the extent that such event directly causes the Contractor or any Customer to be unable to comply with all or a material part of its obligations under this Agreement, namely:  (a) war, civil war or armed conflict;  (b) nuclear, chemical or biological contamination (unless the source or cause of the contamination is the result of the actions of the Contractor and/or any Contractor Personnel or any Contractor Default); or  (c) pressure waves caused by devices travelling at supersonic speeds,  and for the avoidance of doubt the following shall not be regarded as Force Majeure Events:  (a) any industrial dispute relating to the Contractor, the Contractor Personnel; or  (b) any other failure in the Contractor or the Sub-contractor’s supply chain;  (c) any current pandemic situation as it will be expected that the Contractor will comply with Schedule 5 – Construction Brief During COVID 19.  (d) any future pandemic situations where it will be expected that the Contractor will comply with all Government guidelines. |
| Fraud | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Client |
| Good Industry Practice | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| Information | has the meaning given under section 84 of the FOIA. |
| Initial Contract Period | means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract |
| Intellectual Property Rights | means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off |
| Key Personnel | means those persons named in the Specification as being key personnel. |
| Law | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply. |
| Month | means calendar month |
| Normal Working Hours | means 0800hrs to 1700hrs, Monday to Friday, excluding Bank Holidays. |
| Party | means a party to the Contract |
| Parties | means the parties to the Contract |
| Premises | means the location where the Services are to be supplied. |
| Pricing Schedule | means the Schedule containing the Rates and Prices. |
| Principal Designer | means the person, from time to time, appointed by the Client to fulfil the role of Principal Designer in accordance with the CDM Regulations. |
| Quality Standards | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule |
| Receipt | means the physical or electronic arrival of the invoice at the address of the Client detailed at clause A5.3 or at any other address given by the Client to the Contractor for the submission of invoices |
| Regulatory Bodies | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly |
| Relevant Convictions | means a conviction that is relevant to the nature of the Services or as relevant to the work of the Client. |
| Replacement Contractor | means any third party service provider appointed by the Client to supply any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract |
| Request for Information | shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply |
| Schedule | means a schedule attached to, and forming part of, the Contract. |
| Service Provider | means the person, firm or company with whom the Client enters into the Contract. |
| Services | means the services to be supplied as specified in the Specification. |
| Site | means the individual Client’s Sites the Contractor is undertaking the Services from time to time. |
| Statement of Requirement | means the description of the Services to be supplied under the Contract as set out in Schedule 2 including, where appropriate, the Key Personnel and the Quality Standards |
| Staff | means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract |
| Staff Vetting Procedure | means the Client’s procedures for the vetting of personnel and as advised to the Contractor by the Client from time to time. |
| Tender | means the document(s) submitted by the Contractor to the Client in response, including any subsequent clarifications to the Client’s invitation to Contractors for formal offers to supply it with the Services |
| Transferee | means the legal person who carries out the services as successor to the Contractor |
| Variation | has the meaning given to it in clause F3.1 (Variation). |
| VAT | means value added tax in accordance with the provisions of the Value Added Tax Act 1994 |
| Working Day | means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London |